

Issue: Government Ownership/Use

AMERICAN NATIONAL BANK AND)	
TRUST COMPANY OF CHICAGO,)	Docket # 90-16-882
AS TRUSTEE OF TRUST NO. 107796-01)	Parcel Index #s
DATED MARCH 1, 1989, OWNER, AND)	See Exhibit A attached to
CONGRESS CONCOURSE LIMITED)	the Notice of Decision
PARTNERSHIP, BENEFICIARY OF)	
SAID TRUST)	
)	
Applicant)	
)	
v.)	
)	
THE DEPARTMENT OF REVENUE)	George H. Nafziger
OF THE STATE OF ILLINOIS)	Administrative Law Judge

APPEARANCES: Attorneys Dennis M. Nolan and Kathlyne M. Rog appeared on behalf of Congress Concourse Limited Partnership (hereinafter referred to as the "applicant"). Attorney Daniel J. McNamara appeared on behalf of the Commuter Rail Division of the Regional Transportation Authority, The Northeast Illinois Regional Commuter Railroad Corporation (hereinafter referred to as "METRA").

Mr. James W. Burcham, director of real estate and contract management

for METRA, Mr. Robert Shive, head of transportation for METRA, and Mr. C. G. Kingery, real estate consultant to Katten Muchen & Zavis, attorneys for METRA, were present, and testified at the hearing.

The issue in this matter is whether the METRA easement which is located on, across, and upon the parcels listed on Exhibit A, attached to the Notice of Decision in this matter, and the improvements located thereon, utilized for commuter railroad purposes, qualified for exemption from real estate tax for the 1990 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the METRA easement and the improvements located thereon, utilized for commuter railroad purposes, qualified for exemption from real estate tax for the 1990 assessment year.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, was established by the admission in evidence of Department's Exhibits 1 through 6C.

2. On April 19, 1991, the Cook County Board of Appeals transmitted a Statement of Facts in Exemption Application concerning the parcels listed on Exhibit A, attached to the Notice of Decision in this matter, and the METRA easement, including the improvements used for commuter railroad purposes located thereon, to the Illinois Department of Revenue (Dept. Ex. No. 2).

3. On July 17, 1991, the Department denied the exemption of these parcels, including the METRA easement and the improvements used for commuter railroad purposes located thereon (Dept. Ex. No. 3).

4. On July 26, 1991, one of the applicant's attorneys requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The hearing in this matter, which was held on November 14, 1994, was held pursuant to that request.

6. The parcels here in issue had been previously owned by the Chicago, Rock Island, and Pacific Railroad Company (hereinafter referred to as the "Rock Island").

7. Pursuant to the 1983 Second Amended Plan of Reorganization filed in the bankruptcy proceeding, concerning the Rock Island in the United States District Court for the Northern District of Illinois, Eastern Division on December 22, 1983, the Chicago Pacific Corporation was created to be the successor in interest to the remaining property of the former Rock Island.

8. During January of 1989, the Chicago Pacific Corporation was merged into Maytag Corporation.

9. On December 27, 1989, the Maytag Corporation conveyed the underlying fee interest in the parcels here in issue to American National Bank and Trust Company as a trustee, pursuant to Trust No. 107796-01, dated March 1, 1989.

10. The holder of 100% of the beneficial interest in American National Bank and Trust Company Trust No. 107796-01, dated March 1, 1989, on January 1, 1990, was Congress Concourse Limited Partnership, the applicant herein.

11. On January 1, 1990, the applicant owned 100% of the underlying fee interest in each of the parcels listed on Exhibit A, attached to the Notice of Decision in this matter, except the following parcels in which the applicant held an undivided interest with others.

17-16-242-028-0000
17-16-242-029-0000
17-16-411-003-0000
17-16-412-010-0000
17-16-412-011-0000
17-16-412-012-0000

12. On January 28, 1981, the Regional Transportation Authority (hereinafter referred to as the "RTA"), filed an action in the United States District Court for the Northern District of Illinois, Eastern Division, in the matter of RTA v. William M. Gibbons et al., to condemn a

public easement for commuter railroad purposes over the right of way used by Rock Island to operate its commuter railroad services from the LaSalle Street Station platform in a southerly direction over the parcels here in issue, as well as other lands toward Joliet, Illinois (Applicant's Stipulated Ex. No. 44).

13. On September 6, 1984, pursuant to the Final Judgment Order and Supplement to Stipulation in RTA v. Gibbons, the RTA was granted a permanent relocatable public easement for commuter railroad purposes over the parcels here in issue, as well as other parcels, to a height of 30 feet above the top of the rails and including the tracks, ties, roadbed, switches, signal bridges, signal structures, and other improvements.

14. On December 31, 1984, the RTA conveyed by quitclaim deed all of its rights, title, and interest in and to the parcels here in issue and the improvements thereon, used for commuter railroad purposes, as well as other parcels to METRA (Applicant's Stipulated Ex. No. 49).

15. At the northern end of the METRA easement at the LaSalle Street Station platforms, the tracks are on a structure approximately 25 feet above street level.

16. At the station platforms, this elevated structure is wide enough to accommodate eight tracks, as well as loading platforms between them, and along each side, as well as space for several maintenance structures located on the station platform area.

17. The easement gradually descends to grade level and narrows from eight tracks to three tracks between Polk Street and Taylor Street.

18. The applicant retained the right to use the parcels here in issue outside of the easement, that is, outside of the elevated structure where the tracks are elevated, and outside of the graded area to each side of the tracks, where the tracks are not elevated above grade level.

19. The applicant also retained the right to use the air rights above

30 feet above the top of the rails

20. While the order and stipulations in RTA v. Gibbons, supra, provide that this easement may be relocated at the fee owner's expense, both the applicant and METRA agree that the cost of such a relocation would be prohibitive.

21. At the time of this hearing, METRA was running commuter trains on the METRA easement seven days a week. On weekdays, the first train was due into LaSalle Street Station at 6:15 A.M., and the last train was due out of the station at 12:30 A.M. the next morning.

22. On week days, there are a total of about 70 commuter trains a day in and out of the LaSalle Street Station, which carry a total of approximately 15,000 persons daily.

23. From a review of the property record cards concerning these parcels, it appears that the Cook County assessor has assessed all of the land included in the METRA easement, to the applicant, as well as some of the railroad improvements located on some of the parcels, but not the railroad improvements on all of the parcels here in issue.

24. The applicant alleges that on November 28, 1990, the applicant transferred its interest in these parcels to W/H Limited Partnership No. 17. However, the record in this case, although voluminous, is devoid of any documentary evidence of such a transfer.

25. On the date that the applicant acquired the beneficial interest in the parcels here in issue, I find that METRA was occupying and using the METRA easement for commuter railroad purposes.

26. At both the beginning and the end of the hearing held on November 14, 1994, the applicant made a motion that this proceeding be consolidated with a 1992 Application for Exemption filed concerning allegedly these same parcels, in Docket No. 92-16-1604.

27. However, no evidence was offered that the Department had issued an

initial determination in that matter. Consequently, said case was not yet at a stage where a hearing could be requested, pursuant to 35 ILCS 205/137. In view of that fact, the applicant's motion for consolidation was therefore denied as being premature.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *People v. Chicago Title and Trust Co.*, 75 Ill.2d 479 (1979), the Court held that the holder of the beneficial interest in a land trust was the owner of the property for real estate tax purposes. I therefore conclude that the applicant, a for-profit limited partnership, was the owner of the underlying fee in the parcels here in issue. Since it is not disputed that the applicant is a for-profit entity, the underlying fee interest in the parcels here in issue is subject to assessment for 1990 real estate taxes.

35 ILCS 205/1(13) defines real property in part as follows:

"Not only the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all

buildings, structures and improvements, and other permanent fixtures, of whatsoever kind, thereon...and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this act."

While the term "easement" is not found in the above definition, such an interest would appear to be included within the phrase "all rights and privileges belonging or in anywise pertaining thereto". It should also be pointed out that the term "easement" is not otherwise denominated in the Revenue Act, so as to be excluded from this definition.

Another provision of the Revenue Act raises the conclusion that an easement as a lesser than fee interest may properly be found to be "real property." Section 20(5) of the Revenue Act specifically discusses real estate encumbered by a public easement, but excludes Cook County. While Cook County real estate is excluded from this provision, it does provide insight into the intent of the legislature. 35 ILCS 205/20(5) provides in part as follows:

"In the assessment of real estate encumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property."

In Cook County, the Cook County Real Property Assessment Classification Ordinance, (hereinafter referred to as the "Ordinance"), which is in effect to classify real property, has no corresponding provision to 35 ILCS 205/20(5) of the Revenue Act, and is silent on the subject of easements. The Ordinance does, however, contain essentially the same definition of real property and real estate, as the Revenue Act.

The Revenue Act also contains a more specific reference on the issue of the treatment of lesser interests in real property. Section 27a of the Revenue Act provides in pertinent part as follows:

"The purchaser of real property on January 1 shall be considered as the owner on that day. Provided, however, that whenever a fee simple title or lesser interest in real property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Act, such property shall be exempt from taxes from the date of the right of possession, payment or deposit of the award therefor." (Emphasis supplied)

Consequently, I conclude that less than fee interests in real estate, including easements, may be assessed and taxed, and therefore, exempted.

Also, see the case of *In re Application of County Collector v. Village of South Holland*, 44 Ill.App.3d 327 (1st Dist 1976), in which the Court held that a common law dedication created a perpetual public easement in the village, which was a free hold estate, qualifying the village as the owner, for the purposes of the exemption provisions of the Revenue Act.

Unquestionably, if METRA owned the METRA easement here in issue, in fee simple absolute, it would qualify for exemption under either, or both, of the following statutory provisions:

The Revenue Act, 35 ILCS 205/19.13, exempts certain property from taxation as follows:

"All property of every kind belonging to any municipal corporation created for the sole purpose of owning and operating a transportation system for public service."

The RTA Act, 70 ILCS 3615/4.08 exempts the property of the RTA and the Service Boards, including METRA as follows:

"The Authority and the Service Boards shall be exempt from all State and unit of local government taxes and registration and license fees other than as required for motor vehicle registration in accordance with the 'Illinois Vehicle Code', as now or thereafter amended. All property of the Authority and the Service Boards is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government."

I therefore conclude that the METRA easement from the base of any supporting structures to thirty feet above the top of the rails including all roadbed, tracks, ties, switches, signal bridges, signals, structures, and other improvements located on, across, or upon the parcels listed on Exhibit A, attached to the Notice of Decision in this matter, should be exempt from real estate tax for the 1990 assessment year.

I further conclude that the fee simple interest in said parcels, which is owned for real estate tax purposes by Congress Concourse Limited

Partnership, a for-profit organization, does not qualify for exemption.

I therefore recommend that the METRA easement for commuter railroad purposes, as herein defined along, over, and across the parcels listed on Exhibit A attached to the Notice of Decision in this matter, qualified for exemption from real estate tax for the 1990 assessment year.

I further recommend that the underlying fee interest, excluding the METRA easement in the parcels listed on Exhibit A attached to the Notice of Decision in this matter, remain on the tax rolls for the 1990 assessment year, and be assessed to the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

August , 1995

EXHIBIT A

1. 17-16-242-028-0000
2. 17-16-242-029-0000
3. 17-16-403-001-0000
4. 17-16-403-002-0000
5. 17-16-403-003-0000
6. 17-16-403-004-0000
7. 17-16-403-005-0000
8. 17-16-403-006-0000
9. 17-16-403-007-0000
10. 17-16-403-008-0000
11. 17-16-403-009-0000
12. 17-16-403-010-0000
13. 17-16-403-011-0000
14. 17-16-403-012-0000

15. 17-16-403-013-0000
16. 17-16-403-014-0000
17. 17-16-403-015-0000
18. 17-16-403-016-0000
19. 17-16-403-017-0000
20. 17-16-403-018-0000
21. 17-16-403-019-0000
22. 17-16-403-020-0000
23. 17-16-403-021-0000
24. 17-16-403-022-0000
25. 17-16-403-023-0000
26. 17-16-403-024-0000
27. 17-16-410-014-0000
28. 17-16-410-015-0000
29. 17-16-410-019-0000
30. 17-16-410-020-0000
31. 17-16-410-021-0000
32. 17-16-411-003-0000
33. 17-16-411-004-0000
34. 17-16-412-012-0000
35. 17-16-412-013-0000
36. 17-16-416-005-0000
37. 17-16-416-006-0000
38. 17-16-416-007-0000